

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5215 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PATEL JIVRAJ ARJAN LIMBANI DECEASED BY HIS LEGAL HEIRS

Versus

MOVIA GRAM PANCHYAT

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Appearance:

MR PK JANI for Petitioners

MR ND NANAVATI for Respondent No. 1

MR JA ADESHRA for Respondent No. 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/97

C.A.V. JUDGEMENT

1. Challenge has been made by the petitioner in this Special Civil Application to the order dated 17th October, 1977, under which the auction of the land in dispute made in his favour had been cancelled. Further consequential action taken in pursuance of the said order has also been challenged by the petitioner in this Special Civil Application.

2. The facts of the case, in brief, are that the nine plots of the land of different dimensions plotted from the Survey No.906 of Village Movia, Taluka Gondal, District Rajkot had been put to auction on 12th July, 1977. There is no dispute that these plots were village site lands. The bid of the petitioner for plot No.7 was Rs.8373-69. 1/4th amount of the auction was deposited by the petitioner on 12th July, 1977, and balance 3/4th amount was deposited by the petitioner on 26th July, 1977.

3. One Shri Thakarshi Devjibhai Patel complained against the auction of the plot No.7 in favour of the petitioner vide application dated 23rd July, 1977 submitted in the office of the Taluka Development Officer, Gondal. The petitioner averred that the Deputy District Development Officer, Rajkot, made thorough inquiries in respect of the allegations made by Shri Thakarshi Devjibhai Patel in the application aforesaid, and he did not find anything wrong in the auction. However, under the order dated 17th October, 1977, the auction sales in respect of the nine plots were cancelled and the petitioner urged that this has been done without giving any notice or opportunity of hearing to the affected persons including himself. The petitioner has stated that he along with other persons filed a revision application against the aforesaid order before the District Development Officer, but the same has not been heard. The disciplinary proceedings were initiated against one Shri Nathalal Jivabhai, Circle Inspector, who held the said auction, with respect to the irregularities said to have been committed in respect of the auction of the plots and the said disciplinary proceedings were concluded in his favour, as nothing had been found to be wrong with the auction of the plots conducted by him.

4. All nine plots after public notice were auctioned, but in the present case we are only concerned with the plot No.7. This plot No.7 was auctioned on 16th July, 1980, and one Bhagwandas Hiradas had given the highest bid. Shri Bhagwandas Hiradas had filed regular civil suit No.187/81 in the Court of Learned Civil Judge (S.D.), Gondal, on 5th July, 1981, claiming the possession of the plot No.7 as also damages of Rs.2000/against the State of Gujarat, District Panchayat of Rajkot, Taluka Panchayat, Gondal, and Gram Panchayat of Movia. The petitioner was not the party to that suit. During the pendency of the said suit, the notice came to be issued to the petitioner by the Gram Panchayat dated 21st April, 1981, informing him that his possession of

the plot No.7 is unauthorised and that the said plot has also been sold to Bhagwandas Hiradas in auction held on 16th July, 1980. He was called upon to hand over the possession of the said plot to the Panchayat. The petitioner submitted his reply to the said notice on 28th April, 1982. The suit filed by Shri Bhagwandas Hiradas was decreed on 18th July, 1983. Thereafter, the Sarpanch of the Panchayat issued notice dated 21st September, 1983, calling upon the petitioner to hand over the possession of the plot No.7. The petitioner replied to the said notice on 26th September, 1983. The petitioner has filed this petition when the Gram Panchayat contacted the Police Officer to provide the police force to enable it to take the possession of the plot No.7 from the petitioner. This Special Civil Application has been filed by the petitioner on 19th October, 1983. This Court has protected the petitioner by grant of interim relief.

5. The counsel for the petitioner contended that the entire amount of the auction bid has been deposited by the petitioner, and as such, there was no occasion left with the authority to cancel the auction. It is further contended that the order dated 17th October, 1977 has been made by the respondent without giving any notice or opportunity of hearing to the petitioner. The third contention is that the revision application preferred by the petitioner has not been decided. The fourth contention urged that the auction has been cancelled on the ground that the irregularities were committed in conducting of the auction, and one of the irregularities has been pointed out to be that the plots have not fetched more price. Carrying this contention further, the counsel for the petitioner contended that the Circle Inspector who had conducted the auction had been chargesheeted with the allegation that he had committed irregularities in conducting the auction, but ultimately nothing has been found against him and he has been exonerated of the charges, and as such, the cancellation of the auction on the ground of irregularities committed in conducting the same, is illegal.

6. On the other hand, the counsel for the respondents supported the order passed by the respondent in the present case.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. After cancellation of auction of the plot No.7 by the respondent under the order dated 17th October, 1977, this plot had been put to auction on 16th July, 1980, and

Bhagwandas Hiradas was the person whose bid was the highest. Shri Bhagwandas Hiradas was the person interested in the matter and any decision given in this case in favour of the petitioner, may adversely affect his interest, but he was not impleaded as party to this petition. It is not the case where the petitioner was not knowing this fact, but knowing this fact well in advance before the filing of the Special Civil Application, he has not impleaded Bhagwandas Hiradas as party to this petition. However, the petitioner filed a civil application No.3226/96 before this Court on 29th March, 1996 i.e. after about 16 years of the auction and about 13 years of the filing of this Special Civil Application. That civil application has been granted by this court on 24th April, 1996, but thereafter, the petitioner has not taken any steps to get that person served. However, this writ petition otherwise also suffers against that person from delay and laches. The auction had taken place on 16th July, 1980, of which the petitioner was fully in known of, but he has not impleaded that person as party to this petition. Shri Bhagwandas Hiradas had filed a civil suit and that civil suit had been decreed on 18th July, 1983, in his favour and still the petitioner has not challenged that decision by filing an appeal or revision whatsoever. The petitioner immediately after the auction of the land in dispute has taken the steps to oppose any possible civil litigation to be taken by Shri Bhagwandas Hiradas as it comes out from the averments made by him para No.9 of the Special Civil Application. He came to know about the suit filed by Shri Bhagwandas Hiradas, but at no point of time, till decree is made therein, he has taken any steps to get himself impleaded therein as party, and to get his rights adjudicated therein in the land. He allowed that suit to proceed and to be decided finally. The petitioner filed revision application against the order dated 17th October, 1977, before the District Development Officer, but he has not taken any steps whatsoever to get the re-auction of the plot stayed by the revisional authority. The revision application filed by the petitioner was pending on the day on which the Special Civil Application has been filed in this Court, as per his own averments made in the petition. Though more than 13 years have been passed after the filing of the Special Civil Application, but the petitioner has not disclosed before this Court, what ultimately has resulted in the revision application. Challenge to the order dated 17th October, 1977, by this Special Civil Application suffers from delay and laches. This petition against the said order has been filed after more than 6 years. Against the order of cancellation of the auction of the plot

No.7, the petitioner has availed of the alternative remedy of the revision application and that revision application, as per his case, was pending. So here is a case where the petitioner has an alternative remedy and he has availed of the said remedy. So the writ petition, in view of this fact, is not maintainable and reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of B.M.R.D.A. Bombay vs. Gokak Patel Volkart Ltd & Ors. reported in JT 1995 (1) SC 155.

8. Otherwise also, on merits the petitioner has no case. The petitioner has not produced on record of this Special Civil Application whether the auction which has been held in his favour was confirmed by the competent authority or not. The petitioner has averred in this Special Civil Application that the highest bid of the petitioner was accepted by the respondent-Panchayat, but he has not produced any document in support thereof. However, he has deposited the amount of the bid, but merely on deposition of the amount of the auction, the sale will not become final in his favour. Until the bid is accepted by the Panchayat, the petitioner has not acquired any interest in the land. The petitioner has further stated in the writ petition that he had put upon the construction on the land by incurring expenses of about Rs.20,000/-. The petitioner has not produced any document on record to show that the possession of the land has been delivered to him by the Panchayat. He could not have produced any document for the reason that the stage for delivery of the possession would have arisen only after the acceptance of the bid in favour of the petitioner, and as stated earlier, there is nothing on record that the bid has been accepted in his favour. The petitioner has also not produced on record any permission from the competent authority permitting him to raise the construction on the land. So the petitioner has unauthorisedly entered in the possession of the land, and has gone a step further to raise the construction thereon.

9. In the case of Laxmikant vs. Satyawan reported in 1996 (4) SCC 208, it is held by the Apex Court that the State or authority which can be said to be a State within the meaning of Article 12 of the Constitution, is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the condition of holding the public auction and the right of highest bid has to be examined in context with the different conditions under which such auction has been held. In the present case, the counsel for the petitioner has

failed to produce on record, the terms and conditions on which the plot No.7 was put to auction. Not only this, the counsel for the petitioner has further failed to point out any provision from the Land Revenue Code, 1879, or the rules framed therein to show that only on deposition of the full amount of the bid, the bid shall stand confirmed without there being any order of confirmation from the Panchayat. The scheme of rule also suggest that the confirmation of the sale is must, and the possession of the land could have been delivered only after the confirmation of the sale. Here is a case where the petitioner has taken the law in his own hands. Without there being any confirmation of sale he on deposition of the amount entered into the possession of the land and raised the construction also. Not only this, he further allowed the third party, i.e. Bhagwandas Hiradas to complete his interest in the land. The petitioner has not challenged the decree passed in favour of Bhagwandas Hiradas in the civil suit. So the petitioner is in unauthorised occupation of the land and the Panchayat has rightly given him the notice for handing over the possession. The petitioner should have handed over the possession and instead of doing so, he has filed this Special Civil Application and got the stay order from this Court. The petitioner has no legal right, title or interest whatsoever in the land in dispute. As stated earlier, merely because the petitioner has deposited the full amount of the bid, no right, title or interest is created in the land and when the sale was not confirmed, no notice or opportunity of hearing was required to be given to the petitioner for cancellation of the auction. The exoneration of the Circle Inspector of the charges is of no assistance to the petitioner. That was a matter of the departmental inquiry.

10. Taking into consideration the totality of the facts of this case, this writ petition deserves to be dismissed and accordingly it is dismissed. Rule discharged. Interim relief granted by this Court stands vacated. No order as to costs.

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